

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DSI ASSIGNMENTS, LLC,)	
SOLELY AS ASSIGNEE FOR)	
THE BENEFIT OF CREDITORS)	
OF PEARL AUTO AUTOMATION INC.,)	
)	
Plaintiff,)	
v.)	Case No. 1:17-cv-11963
)	
AMERICAN ROAD PRODUCTS,)	
INC., INSTALLERNET, INC.,)	
ANTHONY FRANGIOSA,)	
STEPHEN WITT; Does 1-50,)	
)	
Defendants.)	
_____)	

DEFENDANTS' PARTIAL MOTION TO DISMISS

This action arises out of an alleged breach of a purchase order contract for the sale of automotive backup-camera inventory. Plaintiff DSI Assignments, LLC (“DSI”) attempts to cast this straightforward contractual dispute – which began when its assignor, Pearl Automation, Inc. (“Pearl Auto”) failed to deliver software vital to the operation of the back-up camera inventory - as a nefarious case of trademark infringement. Although defendants American Road Products, Inc. (“ARP”), InstallerNet, Inc. (“InstallerNet”), Anthony Frangiosa (“Frangiosa”), and Stephen Witt (“Witt”) vigorously dispute infringing on DSI’s trademarks, they will leave an effort to seek the dismissal of most of DSI’s 12-count complaint to another day, following the development of a full evidentiary record. However, the defendants now move pursuant to Mass.R.Civ.P. 12(b)(6) to dismiss four counts of the Complaint that fail to state a claim, even accepting all of DSI’s allegations as true. In further support of their motion, they rely on the attached memorandum of law.

WHEREFORE, ARP, InstallerNet, Frangiosa, and Witt request that Count VIII (unfair and deceptive trade practices in violation of G.L. c. 93A, §11); Count X (quantum meruit); Count XI (account stated) and Count XII (fraudulent inducement) be dismissed with prejudice.

Respectfully submitted,

AMERICAN ROAD PRODUCTS, INC.,
INSTALLERNET, INC., ANTHONY
FRANGIOSA, and STEPHEN WITT,

By their attorneys,

/s/ Michael F. Connolly
Michael F. Connolly (BBO #551273)
Michael D. Brier (BBO #678647)
RUBIN AND RUDMAN LLP
53 State Street, 15th Floor
Boston, MA 02109
Tel: (617) 330-7100
Fax: (617) 330-7550
mconnolly@rubinrudman.com
mbrier@rubinrudman.com

Dated: December 15, 2017

Certificate of Service

I, Michael Brier, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 15, 2017.

/s/ Michael Brier
Michael Brier

